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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-229

ARMEN DE FILIPPO and SHELDON FLEISHMAN,
t/a A&S, a Partnership,

Petitioners,

v.

FORD MOTOR COMPANY,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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QUESTION PRESENTED.

Should this Court grant certiorari in a case where the jury, by its answers to written questions submitted to it pursuant to Federal Rule of Civil Procedure 49(a), rejected the only theory of liability upon which the case was tried—that respondent Ford and certain Philadelphia area Ford dealers had engaged in a *per se* illegal group boycott—and the holding of the court of appeals, based on the jury's findings, was not in conflict with any prior decision of this Court or of any lower court, created no "exception" to group boycott principles, and did not violate any Seventh Amendment right of the plaintiff to a trial by jury.

COUNTERSTATEMENT OF THE CASE.

Petitioners' complaint charged that respondent Ford Motor Company and its Philadelphia area dealers conspired to eliminate petitioners as Ford dealers by preventing them from becoming dealers at the Presidential Ford dealership. Petitioners (hereafter referred to as "plaintiffs") asserted that Ford and its dealers had engaged in a group boycott which was illegal *per se* under Section 1 of the Sherman Act, 15 U. S. C. § 1 (1970). (21a-22a, 33a-37a, 42a-43a.) [1]

Plaintiffs became Ford dealers at Chestnut Motors in West Philadelphia in early 1969. Eight and a half months later the Chestnut physical facilities, leased from the previous dealer, were destroyed by fire. Thereupon, plaintiffs and Ford discussed the possibility of plaintiffs acquiring a different dealership in the Philadelphia area. The discussions focused on Presidential, a dealership and facilities owned and operated by Ford itself. (App. A at 4a.)

On December 18, 1969, plaintiffs signed a written offer to purchase the assets (excluding the real estate) of Presidential.[2] The offer contemplated an investment

1. Citations to the appendices to the petition identify the specific appendices by the abreviation "App." and the appropriate letter designations, and state the appendix page numbers (*e.g.*, "App. A at 1a"). Citations to the appendix in the court below state only the appendix page numbers. The page numbers of volumes 1 and 2 of the appendix below have the suffix "a" (*e.g.*, "21a-22a"); the page numbers of volume 3 of the appendix below have the suffix "ex" (*e.g.*, "250ex"). Trial exhibits, which are reproduced in volume 3, are referred to by the numbers used at trial (*e.g.*, "D-64"). Citations to pages of the trial transcript not reproduced in the appendix below have the prefix "Tr."

2. Plaintiffs improperly refer to the document plaintiffs signed as "the Agreement." *See e.g.*, petition at 4. The instrument which plaintiffs signed, by its own terms, was not an "agreement." It was an offer to purchase, and it was never signed or otherwise "accepted" in writing by any Ford representative (P-116, 170ex, Tr. 241; Tr. 2159). While the jury did find that a contract had

arrangement similar to that under which plaintiffs had operated Chestnut, with plaintiffs to invest 20% of the capital, Ford to invest 80% of the capital and plaintiffs to apply a certain portion of the profits to buy out Ford's investment. The plaintiffs were not to provide their 20% by new capital; rather, Ford was to credit them with the value of their interest in Chestnut immediately prior to, and undiminished by their losses resulting from, the fire. Plaintiffs' offer had two special features, on which plaintiffs insisted:

> (1) Plaintiffs could manage Presidential with only Ford's capital at risk for an initial three month period after which plaintiffs might put their own 20% of the capital at risk and proceed with the deal, and
>
> (2) If they proceeded with the deal, plaintiffs would defer payment of 50% of the first year's rent and 25% of the second year's rent on the Ford-owned real estate until the fourth and fifth years of the dealership.[3]

Other Philadelphia area Ford dealers, upon learning of the proposal, protested to Ford about the two special features. They feared that plaintiffs, during the period they had no money at risk, would use Ford's money to subsidize losses and thus gain an unfair competitive advantage over dealers who had their own capital at risk.

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2. (Cont'd.)
been made, whatever that "contract" was, it was not the instrument itself. The court of appeals recognized that the sufficiency of the evidence to support the jury's finding was "suspect" but did not pass on the question because, as both the district court and the court of appeals found, any alleged contract was unenforceable under Pennsylvania's Statute of Frauds, 12A P. S. § 2-201 (1970). (App. A at 16a, 20a.)

3. App. A at 4a-5a; P-116, 170ex, Tr. 241; 69a-70a, 123a-24a, 343a-44a, 635a, 642a-43a, 648a-49a; P-71, 112ex, Tr. 2781; P-98, 141ex, Tr. 560; P-114, 159ex, Tr. 1739.

They also feared that deferring the rent would give plaintiffs an unfair cost advantage. The dealers *never* objected to plaintiffs' becoming Ford dealers at Presidential or any other dealership; they objected only to the special terms.[4]

Ford's legal department, concerned about conflict with the Robinson-Patman Act, 15 U. S. C. §§ 13(d), (e) (1970), advised Ford that the deferred rent provision was unacceptable unless also offered to other dealers. Ford then discussed with other dealers the possibility of offering them deferred rent plans, and even considered the purchase and leaseback of dealer-owned real estate so that deferred rent plans could be offered to all dealers. Problems were posed, however, by dealers who did not want to sell their real estate to Ford and lease it back, and by dealers who were concerned about the disadvantage they would suffer because of the delayed investment feature. (App. A at 5a.)

Ford had two options (287a-90a, 629a-36a):

(1) Accept plaintiffs' proposed terms, commit itself to the onerous process of purchasing and leasing back the real estate of a number of its dealers, and risk further dealer complaints and possible lawsuits (which had been threatened) (P-167, 232ex., Tr. 4151; D-64, 276ex, 286ex, 291ex, Tr. 4151; 160a, 600a), or

(2) Reject plaintiffs' proposal and attempt to work out a deal with them which eliminated the objectionable special terms.

Ultimately, the vice-president and general manager of Ford decided not to consummate the Presidential pro-

4. App. A at 5a, 15a; 569a-70a, 643a-46a, 159a-61a, 389a-90a, 394a, 410a-13a, 416a, 420a, 424a-25a, 460a-63a, 465a-66a, 561a-64a, 567a, 577a-84a, 587a, 591a, 602a, 634a-35a; D-64, 276ex, 282ex, 284ex, 285ex, 290ex, 291ex, 293ex-94ex, Tr. 4151; 376a-77a.

posal as it was structured. On January 9, 1970, he traveled to Philadelphia and announced his decision to the dealers. At the same time he instructed the Philadelphia sales manager to tell plaintiffs that Ford had no objection to plaintiffs' taking over the Presidential dealership without the delayed investment and delayed rental features. Ford then offered to discuss such a deal with plaintiffs, but plaintiffs did not respond.[5] Instead, they filed this antitrust action seeking treble damages, attorneys' fees and costs. (App. A at 5a-6a; 391a-92a, 629a-36a.)[6]

Plaintiffs tried the case on a single theory of liability—that Ford and its Philadelphia area dealers had engaged

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5. Plaintiffs' statement of the case improperly omits mention of Ford's offer to deal with the plaintiffs without the special terms and plaintiffs' failure to respond. These are important facts which the court of appeals took into account (App. A at 6a, 15a).

6. At page 6 of plaintiffs' petition, plaintiffs state certain allegations concerning the circumstances of the eventual termination of their interest in Chestnut. Ford has not responded to those allegations in full since they are not material to the issues raised by the petition, but Ford does wish to make clear that it does not agree with plaintiffs' statement. The discussions plaintiffs refer to took place nearly two months after the rejection of plaintiffs' offer for Presidential. By that time, Chestnut was completely closed, out of business and liquidated, and cumulative post-fire losses had erased the pre-fire profits (370a-71a; D-112, 347ex, Tr. 2201; Tr. 2193-94, Tr. 2199-2201). Although plaintiffs were then entitled to nothing under their investment contract, Ford offered to give them the pre-fire value of their interest in Chestnut, calculated at $88,000, in exchange for a release. On advice of counsel, plaintiffs refused to sign a release; they also refused to resign from the defunct dealership. Since a law suit had been threatened, Ford was not willing to give plaintiffs the $88,000 without a release, and since plaintiffs had refused to resign, it was necessary for Ford, in order to close out the dealership, to exercise the formal rights it had as preferred shareholder under the investment contract (112a, 353a-56a, 478a-79a, 370a-71a, 430a-31a; Tr. 2861-66; P-105, 156ex, Tr. 236; P-107, 158ex, Tr. 236). The jury, by its answer to interrogatory 12, found that plaintiffs' interest in Chestnut was worthless at the time these events took place (828a). The court of appeals has sustained that finding (App. A at 22a) and plaintiffs do not challenge it here.

in an illegal *per se* group boycott to exclude plaintiffs as Philadelphia area Ford dealers by preventing them from becoming dealers at Presidential (App. A at 12a; 21a-22a, 33a-37a, 42a-43a). The district court submitted this theory to the jury pursuant to Federal Rule of Civil Procedure 49(a) by special written interrogatories 1 and 2, which are quoted in full in the court of appeals' opinion (App. A at 11a-12a).

Under the scheme of the district court's interrogatories, an affirmative answer to both interrogatories 1 and 2 was needed to support a finding of liability. The first interrogatory asked the jury whether Ford's rejection of the single set of terms plaintiffs had proposed for the purchase of Presidential was the result of concerted action between Ford and its dealers. The jury found that it was. The second interrogatory concerned the purpose of the concerted action. The jury's answer to that interrogatory was that "the purpose of the agreement . . . between Ford and its Philadelphia area dealers" was *not* "to prevent plaintiffs from becoming Ford dealers in the greater Philadelphia area on any terms" (App. A at 11a). The jury thus rejected the boycott theory on which petitioners had tried the case. Deplorably, plaintiffs' petition fails even to mention special interrogatory 2 and the jury's negative answer to it (*see, e.g.*, petition at 6-7).

Although the jury had rejected the group boycott theory of liability, it nevertheless gave an affirmative answer to a third special interrogatory (quoted in full at App. A, 12a), which, despite objections by all parties, the district court had submitted under a "rule of reason" theory of liability. The parties had objected to the interrogatory because the case had not been tried on—and there was no evidence to support—such a theory. (App. at 12a; App. C at 35a-36a.) Based on the answer to the third interrogatory, the jury went on to answer interrogatories about in-

jury and damages, and the trial court entered judgment for the plaintiffs (App. A at 4a; App. C at 58a; 830a; 718a).[7]

In ruling on Ford's post-trial motion for judgment notwithstanding the verdict, the district court rejected the answer to special interrogatory 3 as a basis of liability, admitting that the parties had been right and that there was no evidence to support "rule of reason" liability (App. A at 12a; App. C at 35a-36a). Nevertheless, the district court refused to grant judgment for Ford. Instead, it attempted to supply the missing ingredient of a *per se* illegal group boycott by a post-trial fact finding of its own (App. C at 58a, 40a-43a). Ford appealed.

The court of appeals reversed and ordered that judgment be entered for Ford (App. A at 23a-24a). It first confirmed that the district court had correctly disregarded special interrogatory 3 as "improvidently submitted to the jury" (App. A at 12a), holding that "plaintiffs' case was tried strictly on a theory of *per se* illegality and not under the 'rule of reason'" (*ibid.*). Then, pursuant to the jury's finding that Ford and its dealers had no purpose to keep the plaintiffs from becoming Ford dealers (App. A at 13a), it flatly rejected the district court's post-trial finding of fact as ". . . contrary to the evidence adduced at trial. . . ." (App. A at 15a). In short, said the court of appeals, plaintiffs had ". . . failed to prove their case . . ." (*ibid.*).

7. In addition to an antitrust claim, the plaintiffs had asserted a claim under the Automobile Dealers Day in Court Act, 15 U. S. C. § 1222 (1970), and claims under Pennsylvania law for breach of contract and for breach of an alleged quasi-contractual obligation on Ford's part to return to plaintiffs the value of their interest in Chestnut prior to the fire (without diminution for losses suffered as a result of the fire). The district court directed a verdict on the latter claim (656a) and, on the basis of the jury's answers to pertinent special interrogatories, entered judgment for Ford on the others (App. A at 6a-7a). Plaintiffs cross-appealed from these judgments and the court of appeals affirmed (App. A at 20a, 22a). Plaintiffs' petition for a writ of certiorari raises no issues with respect to these judgments.

ARGUMENT.

The court of appeals simply held that, in view of the jury's findings that although there had been joint action, Ford and its dealers had had no purpose to exclude plaintiffs as Ford dealers in the Philadelphia market, plaintiffs had failed to establish a *per se* illegal group boycott. Plaintiffs do not attack the jury's findings. Rather, their petition attacks the reasoning of the court of appeals, asserting that its holding is in conflict with holdings of this Court and other courts of appeals, deprives them of their Seventh Amendment right to a trial by jury and "has virtually eliminated the group boycott as an effective method of enforcing the Sherman Act" (petition at 20). The assertions of the petition cannot withstand analysis and raise no question which merits the attention of this Court.

The court below carefully analyzed and scrupulously followed this Court's group boycott cases. Its discussion appears at pages 7a-11a of Appendix A to the plaintiff's petition. Plaintiffs' point to the court of appeals' conclusion, founded on its review of this Court's decisions, that "a concerted activity constitutes a 'group boycott' and is considered *per se* 'in restraint of trade' when 'there [is] a purpose either to exclude a person or group from the market, or to accomplish some other anti-competitive objective, or both.'" (App. A at 11a, quoting from *Joseph E. Seagram & Sons, Inc. v. Hawaiian Oke & Liquors, Ltd.*, 416 F. 2d 71, 76 (9th Cir. 1969), *cert. denied*, 396 U. S. 1962 (1970).) From this statement plaintiffs would conjure up a conflict. But they erroneously contend that "the purpose or motivation of a group is irrelevant to the existence of a prohibited group boycott" (petition at 9), citing *United States v. General Motors Corp.*, 384 U. S. 127 (1966); *Fashion Originators' Guild of America v. FTC*,

312 U. S. 457 (1941). These cases do not so hold, and they do not conflict with the instant case.

Plaintiffs fail to distinguish between the immediate purpose of concerted action which necessitates its classification as a *per se* offense, and a business justification offered for such conduct once its *per se* illegality has been determined. The very passage from *General Motors* which the plaintiffs quote at page 9 of their petition confirms this distinction:

> "The principle of these [group boycott] cases is that where businessmen concert their actions *in order to deprive others of access to merchandise which the latter wish to sell to the public*, we need not inquire into the economic motivation underlying their conduct." (384 U. S. at 146; emphasis added.)

In *General Motors*, the critical element of the group boycott was thus the conspirators' purpose "to deprive others of access to merchandise."[8] That fundamental purpose or object of the joint action brought the case within the *per se* category and thus rendered irrelevant the business justification proffered by defendants—the preservation of dealer profit margins and the manufacturer's distribution system (*ibid.*). Similarly, in *Fashion Originators' Guild of America v. FTC*, 312 U. S. 457 (1941), the Court made an initial holding that ". . . [t]he *purpose and object* of this combination, its potential power, its tendency to monopoly, the coercion it could and did practice upon a rival method of competition, all

8. The Court in *General Motors*, in making its determination of *per se* illegality, noted additional conspirational purposes "to eliminate the discounters from participating in the market" (*id.* at 144) and "to protect franchised dealers from real or apparent price competition" (*id.* at 147).

brought it within the policy of the prohibition declared by the Sherman and Clayton Acts" (*id.* at 467-68; emphasis added). Only then did it consider and reject as irrelevant the alleged business justification of "protect[ing] . . . against the devastating evils growing from the pirating of original designs" (*id.* at 467).

In the instant case, the jury answered "No" to the only question put to it which might have established the essential requirement of an "unlawful object" (*Fashion Guild, supra*, 312 U. S. at 468), and plaintiffs do not challenge that finding. Whether or not there was a reasonable "business justification" was never even raised as an issue. In such circumstances, the court of appeals' holding that there was no jury determination which established the elements of a group boycott was plainly in harmony—not in conflict—with this Court's holdings in *General Motors* and *Fashion Guild*.

Neither does the decision below, as is alleged by plaintiffs at pages 10-11 of their petition, conflict with the holding of the Ninth Circuit in *United States* v. *Hilton Hotels Corp.*, 467 F. 2d 1000 (1972), *cert. denied*, 409 U. S. 1125 (1973). In *Hilton*, hotel operators agreed to give preferential treatment to suppliers who contributed to a fund to attract convention business to their city and to curtail purchases from those suppliers who did not. The court found the restraint a classic example of coercion which was "forbidden without more" (*ibid.*), and declared:

> "The primary purpose and direct effect of defendants' agreement was to bring the combined economic power of the hotels to bear upon those suppliers who failed to pay. The exclusion of uncooperative suppliers from the portion of the market represented by the supply requirements of the defendant hotels was the object of the agreement, not merely its incidental consequence." (*Id.* at 1003-04.)

This holding that the agreement in *Hilton* had both coercive and exclusionary purposes makes clear the vast difference between *Hilton* and the instant case, where there is an unchallenged jury finding that no purpose to exclude existed, and where coercion was not even suggested as an issue.[9]

Plaintiffs make the alternative contention that the jury in fact found the requisite anti-competitive purpose by its answer to interrogatory 3, and they claim that the court of appeals, in rejecting their contention, infringed their Seventh Amendment right to a jury trial (petition at 11-14). But by counsel's own admission, plaintiffs did not even purport to offer evidence concerning the issues dealt with by interrogatory 3. In vehemently objecting to the submission of that interrogatory to the jury, plaintiffs' counsel argued:

> ". . . [C]oncerted refusal to deal I will concede is the only antitrust violation we have tried to prove. . . . We did not try to prove as a matter of fact unreasonable restraint of trade because . . . to prove an unreasonable restraint of trade would require just

9. Plaintiffs also suggest at pages 10-11 of the petition that the Ninth Circuit, in *Hilton*, rejected its own decision in *Joseph E. Seagram & Sons, Inc. v. Hawaiian Oke & Liquors, Ltd.*, 416 F. 2d 71 (1969), *cert. denied*, 396 U. S. 1062 (1970, which the court below quoted (App. A at 11a). This is not so. In *Hilton*, the Ninth Circuit cited *Seagram* with approval, distinguishing it as "a case in which joint activity [had] a primary purpose and direct effect of accomplishing a legitimate business objective [and was] also alleged to have had an incidental and indirect adverse effect upon the business of some competitors" (*Hilton*, *supra*, 467 F. 2d at 1003). It has also cited *Seagram* with approval since *Hilton* (*Chisholm Bros. Farm Equipment Co. v. International Harvester Co.*, 498 F. 2d 1137, 1144, *cert. denied*, 419 U. S. 1023 (1974). *Seagram* has also been cited with approval by the Fifth Circuit in *E. A. McQuade Tours, Inc. v. Consolidated Air Tour Manual Comm.*, 467 F. 2d 178, 187 (1972), *cert. denied*, 409 U. S. 1109 (1973) and the Tenth Circuit in *Colorado Pump & Supply Co. v. Febco, Inc.*, 472 F. 2d 637, 640, *cert. denied*, 411 U. S. 987 (1973).

> an incredible amount of evidence. . . . So you put us in a position where you are submitting an issue of fact to the jury, which we didn't try to prove. We have to lose on that because we never tried to prove it because it is not an issue of fact, sir. This is an issue of law." (662a.)

There is obviously no Seventh Amendment right in issue here, and the court below had ample ground for its holding (App. A at 12a).[10]

In any event, plaintiffs cannot torture interrogatory 3 into a finding of a *per se* illegal anti-competitive objective. On its face, the interrogatory contained no reference to purpose or *per se* illegality; it spoke only of "unreasonable restraint of trade." While the district court's cryptic charge relating to interrogatory 3 contained general references to the purpose of the concerted action, it specified no particular purpose, and certainly did not specify any pernicious anti-competitive purpose sufficient to render the defendants' conduct illegal *per se*. The jury's answer to interrogatory 3 simply does not mean what plaintiffs would have it mean.[11]

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10. Plaintiffs assert at page 13 of the petition that their counsel objected to interrogatory 3 on the basis of an incorrect assumption as to what the court would charge the jury with respect to interrogatory 3. The record does not bear this out. It shows that, although counsel did not know the contents of the charge when he made the remarks quoted in the text, the trial judge distributed a draft copy of the charge the day before the charge was given, plaintiffs' counsel submitted a written objection to interrogatory 3 after receipt of the draft, and he affirmed the written objection after the court had delivered its actual charge to the jury (Tr. 4474-75, 4524-27; 808a).

11. Plaintiffs assert on page 5 of their petition and in footnote 1 on pages 12 and 13 of their petition that they offered sufficient evidence of an anti-competitive purpose to support the jury's alleged finding of such a purpose. They say that their evidence "established" that the "real motive" of the complaining dealers was to eliminate plaintiffs as dealers and to eliminate Presidential

Plaintiffs' final contention (petition at 15-19) is that the court of appeals has "propounded a major exception to the group boycott prohibition, namely, that a group boycott is legal if it seeks to deprive a competitor of 'special terms' which he has negotiated with a supplier" (petition at 15). This contention has no more substance than plaintiffs' prior contentions, for the court announced no such "exception."

The facts found by the jury brought the case squarely within the usual rules governing group boycotts. In contrast to the cases in which group boycotts have been found,[12] there was no combination of many suppliers, no complete refusal to deal and no purpose to eliminate plaintiffs as competitors, to deny them access to products or markets, or to coerce their business practices. All that occurred was the rejection of a single set of special terms more favorable to plaintiffs than those generally available to plaintiffs' dealer-competitors. Left open were an in-

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11. (Cont'd.)
as a dealership. The jury's answer to interrogatory 2 refutes the first proposition, and the second proposition was never an issue in the case, was never tried, and, in spite of plaintiffs' unwarranted assertions, is not established by a few fragments of evidence taken out of context from the record of a seven-week trial.

12. For example, boycotts were found in *United States v. General Motors Corp.*, 384 U. S. 127 (1966) (auto dealers refused to deal with price cutting discounters in order to deny them access to products); *Klor's, Inc. v. Broadway-Hale Stores, Inc.*, 359 U. S. 207 (1959) (appliance suppliers would not sell to discounter or would sell "only at discriminatory prices and highly unfavorable terms" (*id.* at 209) as part of a scheme to drive plaintiff "out of business as a dealer in the defendants' products" (*id.* at 213); *Fashion Originators' Guild of America v. FTC*, 312 U. S. 457 (1941) (garment suppliers refused to deal with certain retailers in order to coerce the retailers not to handle garments made by style pirates and thereby to eliminate style pirates from the market); *Eastern States Retail Lumber Dealers Ass'n v. United States*, 234 U. S. 600 (1914) (retail lumber dealers refused to deal with wholesalers who sold direct to consumers in order to force the wholesalers to eliminate direct sales to consumers).

finite number of other possible terms. And, as the court below pointed out, Ford was willing to discuss other terms; it was the plaintiffs who were not (App. A at 6a). Plaintiffs have pointed to no case which found a group boycott in such circumstances, and there is none.[13]

In declining to find a group boycott on the facts of this case, including the jury's express rejection of the only boycott theory put to it, the court of appeals did not announce that group boycotts aimed at "special terms" would necessarily be lawful in all cases. And neither did the court hold that the concerted action of Ford and its dealers was "reasonable" under a "rule of reason" standard; that issue, as the court found (App. A at 12a), was never raised by plaintiffs and never tried. The court simply found that plaintiffs had failed to prove the case they tried (App. A at 15a).

The decision in no way conflicts, as plaintiffs contend (petition at 16-19), with this Court's holding in *Silver v. New York Stock Exchange*, 373 U. S. 341 (1963), or the Fifth Circuit's holding in *North Texas Producers Association v. Young*, 308 F. 2d 235 (1962), *cert. denied*, 372 U. S. 929 (1963). *Silver* did not involve the denial of special terms; rather, it involved the complete denial of access to a service available to plaintiffs' competitors which, according to the Court, plaintiffs "needed in order to compete effectively as broker-dealers in the over-the-counter

13. Courts have uniformly declined to find *per se* illegal group boycotts in the absence of a purpose to exclude, deny access to products or coerce business practices. *See, e.g., E. A. McQuade Tours, Inc. v. Consolidated Air Tour Manual Comm.*, 467 F. 2d 178 (5th Cir. 1972), *cert. denied*, 409 U. S. 1109 (1973); *Joseph E. Seagram & Sons Inc. v. Hawaiian Oke & Liquors, Ltd.*, 416 F. 2d 71 (9th Cir. 1969) *cert. denied*, 396 U. S. 1062 (1970); *Ace Beer Distributors, Inc. v. Kohn, Inc.*, 318 F. 2d 283 (6th Cir.), *cert. denied*, 375 U. S. 922 (1963); *Packard Motor Co. v. Webster Motor Car Co.*, 243 F. 2d 418 (D. C. Cir.), *cert. denied*, 355 U. S. 822 (1957).

market" (373 U. S. at 347). *North Texas* was not even a group boycott case. Liability in that case was based solely on price fixing and monopolization, and the case did not involve any question of "special terms" (*see, North Texas, supra,* 308 F. 2d at 241). Neither *Silver* nor *North Texas* lends support to plaintiffs' petition.

CONCLUSION.

In this case, the jury found for Ford and against plaintiffs on the only antitrust issue that was tried and properly submitted to it. After a thorough review of the lengthy record and the applicable law, the court of appeals, without announcing any new legal theories, unanimously affirmed that verdict. For the reasons stated, plaintiffs' petition should be denied.

Respectfully submitted,

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